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## IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

### SECOND APPELLATE DISTRICT

#### **DIVISION SEVEN**

In re L.H., a Person Coming Under the Juvenile Court Law.	B206542	
	(Los Angeles County Super. Ct. No. FJ37233)	
THE PEOPLE,		
Plaintiff and Respondent,		
v.		
L.H.,		
Defendant and Appellant.		

APPEAL from an order of the Superior Court of Los Angeles County Robert J. Totten, Commissioner. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews and David E. Madeo, Deputy Attorneys General, for Plaintiff and Respondent.

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L. H. was declared a ward of the juvenile court and ordered into the camp community placement program. On appeal, L.H. contends the court's finding he had committed attempted first degree burglary was not supported by sufficient evidence. We affirm the order.

#### FACTUAL AND PROCEDURAL BACKGROUND

In a delinquency petition (Welf. & Inst. Code, § 602) filed November 6, 2007, it was alleged then 17-year-old L. H. had committed the offenses of attempted first degree robbery and attempted first degree burglary. The petition further alleged that a person, other than an accomplice was present during the attempted burglary, thus making the offense a violent felony under Penal Code section 667.5, subdivision (c).

- 1. The Jurisdiction Hearing
  - a. The People's evidence
- L. H. and his family lived across the street from Maria Franco and her husband. Franco's house was surrounded by a gated fence, which opened into the front yard. After entering the yard, it was necessary to walk through a patio¹ to reach the front door of the house. The patio was enclosed with a fence including a metal door,² measuring about five feet in height, which could be locked using latches on the patio side. However, someone reaching over the metal door from the front yard could release the latch and enter the patio. The door was usually locked; delivery people typically tossed their packages over the door into the patio. Across from the metal door was the front door. It was made of wood and had a glass window, providing a view of the metal door and the patio from inside the living room.

At around 8:30 a.m. on October 29, 2007, Edwin Ezheverria, a neighbor of Franco, saw L. H. open the metal door and enter the patio. Concerned, Ezheverria alerted Franco's husband by telephone before driving away.

2

The court, counsel, and witnesses also referred to the area as "a porch" at various times during the proceedings.

Witnesses also referred to the door as "a gate."

On the morning of October 29, 2007, the metal door of Franco's enclosed patio was closed. L. H. reached over the door and opened it from the patio side. After being alerted by her husband's telephone call, Franco looked through her front door window from her living room and saw L. H. standing in her patio. He was holding a knife perpendicular to his abdomen. The knife was approximately six to eight inches long and one-inch wide. L. H. knocked on the front door five times and screamed he was looking for a flashlight. He then repeatedly yelled for Franco to open the front door, using an obscenity. L. H. and Franco could see each other through the front door window. Frightened that L. H. intended to harm her, Franco feigned making a telephone call, and he left. L. H. had never come to Franco's house prior to October 29, 2007.

Following the People's presentation of evidence, the juvenile court granted the defense motion to dismiss the attempted first degree robbery allegation, but denied it as to the allegation of attempted first degree burglary. (Welf. & Inst. Code, § 701.)

#### b. The defense evidence

L. H.'s father testified that one morning before L. H. was arrested, he refused his son's request for a screwdriver to fix a closet. L. H. went across the street to get something. L.H. did not appear to be carrying a knife in his hand. L. H.'s mother testified, corroborating her husband's testimony and adding that on October 29, 2007, her son returned home later with some latches or hinges.

L. H. testified in his own defense that when his father refused to loan him a screwdriver, he went to Franco's house to borrow one. L. H. walked through the front yard and up to the metal door, which was unlocked and standing slightly open. After entering the patio, L. H. was approaching the front door when Franco opened it. She appeared to be vacuuming. L. H. asked her for a screwdriver. Franco responded that her husband had all of the tools at another house. L. H. thanked her and left. He then obtained a latch from another neighbor. L. H. had never been to Franco's house before October 29, 2007; he had never spoken to her before that morning.

L. H. denied coming to Franco's door with a knife, asking for a flashlight and demanding she open the door. According to L. H., he never raised his voice during the encounter. L. H. admitted he had a prior juvenile adjudication for burglary.

# c. The juvenile court's findings

The juvenile court found the attempted first degree burglary allegation true, determined it was a felony offense and dismissed the section 667.5, subdivision (c) enhancement allegation.

## 2. The Disposition Hearing

The juvenile court adjudged L. H. a ward of the court, ordered him into the middle term camp community placement program, and calculated the maximum term of physical confinement as six years eight months.

#### **DISCUSSION**

L. H. contends the evidence is insufficient to support a finding of attempted first degree burglary, thereby violating his due process rights under the Fifth and Fourteenth Amendments to the federal Constitution, because the People failed to prove his specific intent or that he "penetrated Franco's (residential) property."

The same standard of appellate review is applicable in considering the sufficiency of the evidence in a juvenile proceeding as in reviewing the sufficiency of the evidence to support a criminal conviction. (*In re Cheri T*. (1999) 70 Cal.App.4th 1400, 1404; *In re Jose R*. (1982) 137 Cal.App.3d 269, 275.) In either case we review the whole record in the light most favorable to the judgment to determine whether it discloses substantial evidence -- that is, evidence that is reasonable, credible and of solid value --- from which a reasonable trier of fact could find the defendant guilty beyond a reasonable doubt. (*People v. Bolin* (1998) 18 Cal.4th 297, 331; *People v. Jones* (1990) 51 Cal.3d 294, 314.)

We resolve all conflicts in the evidence and questions of credibility in favor of the verdict or judgment and indulge every reasonable inference the trier of fact could draw from the evidence. (*People v. Autry* (1995) 37 Cal.App.4th 351, 358.) Reversal for insufficient evidence is unwarranted unless "that upon no hypothesis whatever is there

sufficient substantial evidence to support [the conviction]." (*People v. Bolin, supra,* 18 Cal.4th at p. 331.)

Attempted residential burglary requires proof the defendant attempted to enter a dwelling with the intent to commit a theft or any felony. (Pen. Code, §§ 459, 664.) An attempt requires a specific "intent to commit the crime, and a direct but ineffectual act done toward its commission." (Pen. Code, § 211; *People v. Carpenter* (1997) 15 Cal.4th 312, 387.) L. H. claims the record shows his encounter with Franco "was more likely a misunderstanding or lack of communication" than an attempt to enter her residence for the purpose of committing theft or other felony. However, there is ample evidence to support the juvenile court's finding of attempted first degree burglary: L. H. went to the home of a neighbor he did not know, gained entry to a private patio by reaching over and unlatching the door without permission. Then, while displaying a large knife, L. H. persistently pounded on the front door demanding that it be opened, and left only when he saw the neighbor make a telephone call. The juvenile court could readily find from these facts that L. H. intended to enter the residence to commit theft or other felony against Franco, and had been deterred only when Franco refused to open her front door and appeared to be telephoning for help.

In claiming the evidence of attempted entry was insufficient, L. H. argues the enclosed patio did not constitute part of the outer boundary of Franco's house because it was not an area which implicated Franco's reasonable expectation of privacy and was therefore not protected from unauthorized entry or intrusion. "[A] building's outer boundary includes any element that encloses an area into which a reasonable person would believe that a member of the general public could not pass without authorization. Thus, whereas decisions treat an 'ordinary, unenclosed front porch' of a house [citation] as not part of the building's outer boundary, because a reasonable person usually would believe that a member of the general public did not need authorization to pass onto such a porch, they treat a screen door to an enclosed porch of a house [citations] and a locked gate covered with iron mesh in front of an enclosed and roofed front stairway of a house [citation] as part of the building's outer boundary, because a reasonable person usually

would believe that a member of the general public needed authorization to walk through such a screen door or gate." (*People v. Valencia* (2002) 28 Cal.4th 1, 11, fn. omitted, quoting *People v. Brown* (1992) 6 Cal.App.4th 1489, 1497.) Franco's patio was not an "ordinary, unenclosed front porch" but an enclosed area accessed by a solid metal door at least five feet tall, which was typically closed and locked from the inside, such that delivery people and at least one neighbor, Ezheverria, understood they could not enter without consent. As a result, there was sufficient evidence L. H. committed attempted burglary based on his entry into his area, coupled with his attempt to gain entry into the house through the front door, by repeatedly knocking on the door and ordering Franco at knife point to open it.

# **DISPOSITION**

The order is affirmed.

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We concur:

PERLUSS, P. J.

JACKSON, J.

Ezheverria testified he usually threw a stone at the metal door to notify the neighbors of his presence at their house.